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## State v. Wahl Appellant's Brief Dckt. 43945

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 43945
Plaintiff-Respondent,	)	
	)	TWIN FALLS COUNTY
	)	NO. CR 2004-1686
v.	)	
	)	
CHAD L. WAHL,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF TWIN FALLS**

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**HONORABLE RANDY J. STOKER  
District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

This case presents a question regarding the period of time a lien resulting from an order of restitution to a crime victim continues under the version of Idaho Code § 10-1110 in effect in 2004, where the order of restitution has presumably been recorded as a judgment. In 2004, when the order of restitution in this case was entered, Idaho Code § 10-1110 stated, in pertinent part: “The lien resulting from recording of a judgment other than for support of a child continues five (5) years from the date of the judgment, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as provided by law.”<sup>1</sup> The statute did not exempt orders of restitution to crime victims from the generally applicable five-year statute of limitations and, as such, the five-year statute of limitations should apply in this case and should bar enforcement of the restitution order at issue.

Chad L. Wahl appeals from the district court’s order denying the motion he filed pursuant to Idaho Rule of Criminal Procedure (I.R.C.P.) 60(b) seeking relief from the restitution order entered on July 26, 2004. He contends the district court had subject matter jurisdiction to consider his motion, which was made within a reasonable time as required by I.R.C.P. 60(b). He also contends the district court erred in denying his motion because he was not seeking an advisory opinion, but was instead seeking an

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<sup>1</sup> This statute was amended in 2011, and again in 2015, and now specifically addresses restitution to crime victims, stating, in pertinent part: “A lien arising from an order for restitution to a crime victim where the order of restitution has been recorded as a judgment pursuant to section 19-5305, Idaho Code, continues until twenty (20) years from the date of the judgment, unless the judgment be previously satisfied, or unless the judgment is stayed or set aside.” Idaho Code § 10-1110.

order striking the restitution order pursuant to Idaho Code § 10-1110 due to the State's failure to collect on the order within five years. This Court should vacate the district court's order denying Mr. Wahl's motion for relief from judgment and remand this case to the district court with instructions to grant that motion.

### Statement of the Facts and Course of Proceedings

Mr. Wahl pled guilty to felony eluding a peace officer and was sentenced to a unified term of five years, with two years fixed. (R., pp.48, 64.) On July 26, 2004, the district court ordered Mr. Wahl to pay restitution in the amount of \$5,215. (R., pp.65-67.) The restitution order states in pertinent part: "[P]ursuant to Idaho Code § 19-5305, after forty-two (42) days from the entry of an Order of Restitution . . . an Order of Restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments." (R., p.66.) The record does not indicate whether the order of restitution was ever recorded as a judgment. However, the State attempted to collect on the order of restitution/judgment in 2009. On September 11, 2009, the clerk of the district court filed an affidavit and notice of failure to pay stating Mr. Wahl had failed to pay restitution and, if the money owed was not paid in full by October 12, 2009, a collection agency would seek to collect on the order/judgment, and would charge an additional 33% as a collection fee.<sup>2</sup> (R., p.70.)

On October 21, 2015, Mr. Wahl filed a *pro se* motion for relief from judgment pursuant to I.R.C.P. 60(b)(6) asking the district court to strike the restitution order and declare it unenforceable. (R., pp.79-81.) Mr. Wahl argued that, by operation of Idaho

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<sup>2</sup> The district court presumably had subject matter jurisdiction over the restitution order at this time.

Code § 10-1110, the restitution order expired five years after the date it was entered, and was now void. (R., p.80.)

The district court denied Mr. Wahl's motion for relief from judgment without a hearing. (R., pp.82-86.) The district court concluded it lacked subject matter jurisdiction to consider the motion and the motion was untimely because it was not made within a "reasonable time" as required by I.R.C.P. 60(b). (R., p.83.) The district court also concluded the five-year statute of limitations set forth in Idaho Code § 10-1110 did not apply because there was no evidence the judgment had been recorded, and even if the statute of limitations did apply, the court would not render an advisory opinion on whether the restitution order was enforceable in the absence of a civil suit. (R., pp.83-85.) Mr. Wahl filed a *pro se* motion to reconsider, which the district court denied on December 23, 2015. (R., pp.87-96, 97-98.) Mr. Wahl filed a timely *pro se* notice of appeal on January 19, 2016. (R., pp.99-103.)

### ISSUE

Did the district court err in denying Mr. Wahl's motion for relief from the restitution order entered in this case on July 26, 2004?



## ARGUMENT

### The District Court Erred In Denying Mr. Wahl's Motion For Relief From The Restitution Order Entered In This Case On July 26, 2004

#### A. Introduction

The district court erred in denying Mr. Wahl's motion for relief from the restitution order. The restitution order was entered in this case on July 26, 2004, and the State notified Mr. Wahl on September 11, 2009, that it intended to collect on the order/judgment. Mr. Wahl waited five years to file his motion for relief from judgment because the statute of limitations then applicable to judgment liens was five years, see Idaho Code § 10-1110, and he was waiting for that statute to expire, if it had not already done so. The district court had subject matter jurisdiction to consider Mr. Wahl's motion and the motion was filed within a reasonable time. Though Mr. Wahl recognizes the lack of evidence reflecting recordation, he nonetheless contends the district court should have granted his motion and declared the restitution order null and void. Mr. Wahl did not seek an advisory opinion; instead, he sought an order declaring the restitution order null and void due to the State's failure to comply with the statute of limitations applicable to the collection of judgment liens which, in 2004, did not exempt judgment liens resulting from criminal restitution orders. The district court erred in denying Mr. Wahl's motion for relief from judgment and its order should be vacated.

#### B. Standard Of Review

Mr. Wahl challenges the district court's denial of his I.R.C.P. 60(b) motion for relief from judgment. Pursuant to Idaho Code § 19-5304(10), "[a] defendant, against whom a restitution order has been entered, may, within forty-two (42) days of the entry

of the order of restitution, request relief from the restitution order in accordance with the Idaho rules of civil procedure relating to relief from final orders.” The Court of Appeals has interpreted I.R.C.P. 60(b) as being an appropriate procedural mechanism for requesting relief from a restitution order. See *State v. Weaver*, 158 Idaho 167, 171 (Ct. App. 2014); *State v. Bybee*, 115 Idaho 541, 542 n.1 (Ct. App. 1989).

I.R.C.P. 60(b)(6) authorizes modification of a judgment for “any other reason justifying relief from the operation of a judgment.” “The decision to grant or deny a motion under I.R.C.P. 60(b) is committed to the discretion of the trial court.” *Eby v. State*, 148 Idaho 731, 734, 228 P.3d 998, 1001 (2010) (citation omitted). “In reviewing the trial court’s exercise of discretion, this Court must determine whether the trial court: (1) correctly perceived the issue as one involving the exercise of discretion; (2) acted within the outer boundaries of its discretion and consistently with any legal standards applicable to specific choices it had; and (3) reached its decision by an exercise of reason.” *State v. Waidelich*, 140 Idaho 622, 623 (Ct. App. 2004) (citation omitted).

Mr. Wahl also challenges the district court’s interpretation of Idaho Code §10-1110. “This Court exercises free review over the application and construction of statutes. Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction.” *State v. Cheeney*, 144 Idaho 294, 297 (Ct. App. 2007) (citations omitted).

C. The District Court Had Jurisdiction To Modify The Restitution Order

The district court erred in concluding it lacked jurisdiction to modify the restitution order entered on July 26, 2004. (R., p.83.) In *State v. Jensen*, 149 Idaho 758 (Ct. App. 2010), the Court of Appeals recognized “[r]estitution is in the nature of a civil remedy as

opposed to a criminal sentence.” *Id.* at 762. The Court explained that the time frames set forth in Idaho Code § 19-5304(6) and (19) regarding when a court may consider a request for relief from a restitution order “are procedural in nature” and “[are] apparently designed to secure finality so that the order of restitution may become a civil judgment” but “that purpose does not change their nature from defining when the court may act to, instead, terminating the court’s subject matter jurisdiction to act.” *Id.* Thus, in *Jensen*, the Court of Appeals held the district court “was cloaked with subject matter jurisdiction relative to the orders of restitution” at issue despite the fact that the defendant did not challenge the restitution orders within 42 days. *See id.*; *see also State v. Peterson*, 153 Idaho 157, 161 (Ct. App. 2012) (reading *Jenson* to “indicate[ ] that the jurisdictional time limit articulated in [*State v. Jakoski*, 139 Idaho 352 (2003)]<sup>3</sup> does not apply in the context of proceedings relating to restitution entered in conjunction with a criminal conviction pursuant to I.C. § 19-5304”).

In the present case, the order of restitution was entered in conjunction with a criminal conviction pursuant to Idaho Code § 19-5304, and specifically states it could be recorded as a civil judgment pursuant to Idaho Code § 19-5305 after the expiration of 42 days. (R., p.66.) Like the district court in *Jensen*, the district court here was cloaked with subject matter jurisdiction to modify the restitution order as requested by Mr. Wahl despite the fact that significantly more than 42 days had elapsed since the entry of the restitution order.

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<sup>3</sup> The district court cited *Jakoski* in concluding it lacked jurisdiction to consider Mr. Wahl’s motion. (R., p.83.)

D. The Motion Was Made Within A “Reasonable Time” As Required By I.R.C.P. 60(b)

I.R.C.P. 60(b) states, in pertinent part, that a motion brought under I.R.C.P. 60(b)(6) “must be made within a reasonable time.” In its order denying Mr. Wahl’s motion for relief from judgment, the district court stated Mr. Wahl waited an unreasonable length of time to bring his motion. (R., p.83.) The district court was mistaken.

The restitution order was entered in this case on July 26, 2004. (R., pp.65-67.) The State notified Mr. Wahl on September 11, 2009, that the amount due must be paid by October 11, 2009. (R., p.70.) Mr. Wahl waited five years to bring his motion for relief from the restitution order in order to ensure that the five-year statute of limitations set forth in Idaho Code § 10-1110 had expired, if it had not already done so. On the facts presented, this was not an unreasonable delay.

E. The District Court Erred In Concluding The Five-Year Statute Of Limitations Set Forth In Idaho Code § 10-1110 Did Not Apply To The Restitution Order

In 2004, when the order of restitution was entered in this case, Idaho Code § 10-1110 stated, in pertinent part: “The lien resulting from recording of a judgment other than for support of a child continues five (5) years from the date of the judgment, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as provided by law.” Mr. Wahl recognizes the lack of any evidence reflecting recordation; however, he contends the district court erred in concluding the five-year statute of limitations set forth in § 10-1110 was inapplicable. The State did not file a response in the district court to Mr. Wahl’s motion for relief from the restitution order and, to the extent there was an evidentiary issue, the district court

should have held a hearing prior to making factual findings in favor of the State. A restitution order “gives the victims the present ability to obtain a judgment.” *Bybee*, 115 Idaho at 543. The victims in this case had that ability back in 2004, but they lost that ability by failing to collect on the order/judgment over the course of eleven years.

F. The District Court Erred In Characterizing Mr. Wahl’s Motion As Seeking An Advisory Opinion

In denying Mr. Wahl’s motion, the district court stated that “even if the [c]ourt agreed that there was a judgment subject to the five-year statute of limitations in this case, that argument is an affirmative defense . . . [which can be raised as] as response to a plaintiff’s complaint.” (R., p.84.) The district court concluded it could not rule on the matter “[w]ithout pleadings or an actual controversy.” (R., p.84.) The district court erred in characterizing Mr. Wahl’s motion as seeking an advisory opinion. As previously explained, the district court had jurisdiction over the restitution order, despite the passage of time, and could set aside that order as requested by Mr. Wahl. See, e.g., *State v. Keys*, 160 Idaho 95, \_\_\_, 369 P.3d 313, 315 (Ct. App. 2016) (affirming district court’s order setting aside order for restitution).

### CONCLUSION

For the reasons stated above, Mr. Wahl requests that the Court vacate the district court's order denying his motion for relief from the restitution order and remand this case to the district court with instructions to grant that motion.

DATED this 1<sup>st</sup> day of July, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1<sup>st</sup> day of July, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

CHAD L WAHL  
INMATE #24971  
ISCI  
PO BOX 14  
BOISE ID 83707

RANDY J STOKER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

AWR/eas